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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/27/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/045,035	RAGHUNATHAN ET AL.
	Examiner Joseph C. Merek	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 June 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 17-91 is/are pending in the application.
- 4a) Of the above claim(s) 27 and 36 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-26, 28-35, 37-91 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: Group I, Kidney shaped receptacle; Group II, a substantially circular receptacle.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 17 and 51 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Steven Bauer on August 22, 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-26, 28-35, and 36-91. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27 and 36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

Claim 81 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 71 sets forth the first and second edges are substantially coplanar. Claim 81 states that the first and second edges are substantially horizontal. It is not clear how claim 81 further limits the parent claim.

Claim Rejections - 35 USC § 112

Claims 17-26, 28-35, 37-91 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 17, 28, 61, 81, and 91, " it has not been adequately supported that "each of the opposing walls has a substantially horizontal upper edge". Regarding claim 51, it has not been adequately disclosed that the first and second edges are in substantially the same horizontal plane". Regarding claim 71 it has not been adequately disclosed how the "first and second upper edges are substantially coplanar". Fig. 7, which shows the elected embodiment the top edge is not horizontal. The edge it appears to be curved. These limitations and structure are not disclosed or discussed in relation to the elected embodiment. Fig. 7 does not reflect these claim limitations. Regarding claim 17, it has not been adequately disclosed that only one of the edges has two notches. The bail is claimed as being over the exterior wall. The notches would be required in both walls. Moreover, there is no support for the notches being in only one edge. Regarding claims 26, 35, 37, 44, 71 it has not been adequately disclosed that the shape of the receptacle is kidney shaped. The disclosure previously stated that the receptacle is peanut shaped. Regarding claims 26, 35, 44, there is no support for the receptacle having a maximum height larger than twice the diameter of the inwardly turned end or the support member having a diameter that is less than one half of the maximum horizontal

width of the receptacle. Regarding claims 37 and 71, it has not been adequately disclosed that the receptacle has a middle section, which extends vertically above the adjacent right and left side sections. The drawings are not to be relied upon for critical measurements. Regarding claims 42, 49, it has not been adequately disclosed that the support member is a single-piece with a constant diameter. Regarding claim 56, 66, 76, and 86, there is no support for the first and second notches having substantially the same depth. The above rejections are new matter rejections. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-26, 28-35, 37-91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 17, 28, 61, 81, and 91, " it has not been adequately supported that "each of the opposing walls has a substantially horizontal upper edge". Regarding claim 51, it has not been adequately disclosed that the first and second edges are in substantially the same horizontal plane". Regarding claim 71 it has not been adequately disclosed how the "first and second upper edges are substantially coplanar". Fig. 7, which shows the elected embodiment the top edge is not horizontal. The edge it appears to be curved. These limitations and structure are not disclosed or discussed in relation to the elected embodiment. It is not clear how the edges are horizontal or coplanar or in the same

plane due to all the notches along the top edge. Moreover, the top edge rolls downward into the notches. Fig. 7 does not reflect these claim limitations. Regarding claim 17, it has not been adequately disclosed that only one of the edges has two notches. The bail is claimed as being over the exterior wall. The notches would be required in both walls. Moreover, there is no support for the notches being in only one edge. Regarding claims 26, 35, 37, 44, 71 it has not been adequately disclosed that the shape of the receptacle is kidney shaped. The disclosure previously stated that the receptacle is peanut shaped. Regarding claims 26, 35, 44, there is no support for the receptacle having a maximum height larger than twice the diameter of the inwardly turned end or the support member having a diameter that is less than one half of the maximum horizontal width of the receptacle. Regarding claims 37 and 71, it has not been adequately disclosed that the receptacle has a middle section, which extends vertically above the adjacent right and left side sections. The drawings are not to be relied upon for critical measurements. Regarding claims 42, 49, it has not been adequately disclosed that the support member is a single-piece with a constant diameter. Regarding claim 56, 66, 76, and 86, there is no support for the first and second notches having substantially the same depth. It is not clear what applicant is trying to claim. The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-26, 28-35, 37-91 are rejected under 35 U.S.C. 102(b) as being anticipated by Stahl et al (US 4,391,369). Regarding claim 17, as it is best understood, the opposing walls are substantially horizontal where the top two notches near the outer edge as seen in Fig. 1. The first notch is 62 and the second notch is the one the bale 48 is in. The bale has inwardly turned ends that extend into the receptacle 52. Moreover, this limitation is not required since it involves new matter. Regarding claims 18 and 19, the walls will retain objects vertically supported in the base. The walls extend above the base floor. They will provide lateral support. Regarding claim 20, see Fig. 2, where with the bale in the outer most notch, the container is stacked at its lowest height. See Fig. 6, where the height in the second notch is different from that of the first notch. Regarding claim 21, at least part of the support member is at a different height in the second notch than when in the first notch. Moreover, see Fig. 6, where the pin in the bale is above the edge of the container. The pin is not above the top edge of the container when in the first notch. Regarding claim 22, see Fig. 4 where the outermost notch is deeper than the inner most notch. Regarding claim 37-41, see the above claim discussions. Regarding claims 42 and 49, the single piece and constant diameter of the

bar is not required since it encompasses new matter. Regarding claims 43 and 50, the ends of the bar are turned inwardly. Regarding claim 44, see Fig. 1 of Stahl et al. The receptacle is kidney shaped. Moreover, to the degree that the kidney shape is new matter it is not required. Regarding claim 45-48, see the above claim discussions. Regarding claims 49 and 50, the new matter is not required, therefore the reference satisfies the claim limitations. Regarding claim 51, the third notch is 54 and is deeper since the bottom of the third notch is below that of the other two notches. Regarding claim 52-55, see Figs. 1, 2, and 6. Regarding claim 59, the bar is C-shaped with inwardly turned ends. The ends of the bar of Stahl et al turn from the outside of through the exterior container wall. Regarding claim 61, the first and second sidewall edges are substantially the same horizontal plane. See the top edge where the first two notches are located. Substantially allows for variation. Regarding claim 55, the first support member height is different from the second support member height. Regarding claims 56-70, see Figs. 1, 2, and 6 and the above claim discussions. Regarding claim 71, the receptacle of Stahl et al is kidney shaped and meets the concave and convex limitations where the middle is above the left and right ends. Regarding claim 72-91, see Figs. 1, 2, and 6, and the above claim discussions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 42, 43, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stahl et al (US 4,391,369) Box (3,659,743). Regarding claims 42 and 49, to the degree that the constant diameter of the bar and the bar being one-piece do not represent new matter, Stahl et al does not teach these limitations. Box teaches a bar for a similar container for stacking where the bar is one-piece and of constant diameter. It would have been obvious to employ the bar of Box in the container of Stahl et al to provide a simple and unitary bar for ease of manufacture. Regarding claim 43 and 50, the receptacles receive the inwardly turned ends of the bar.

Claims 71-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stahl et al (US 4,391,369) in view of Loftus et al (US 5,609,254). Regarding claim 71, to the degree that the depth of the notch in the container material has to be greater than that of the other two notches, Stahl et al does not teach this limitation. Loftus, as seen in Figs. 5-7, teaches a similar container where the third notch 14 is deeper in the container wall. It would have been obvious to employ the third notch of Loftus in the container of Stahl et al to provide a lower stacking position or to make the bar more secure in the third position. Regarding claims 72-91, see the above claim discussions under Stahl et al as a 102 rejection.

Response to Arguments

Applicant's arguments filed 6/04/03 have been fully considered but they are not persuasive. The container to Stahl et al teaches the claimed structure. There is no structure required by the limitations that is not in Stahl or the references combined with Stahl et al.

Conclusion

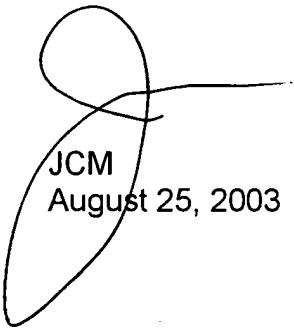
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


JCM
August 25, 2003


Stephen K. Cronin
Primary Examiner